

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL TOSCANO and DONNA TOSCANO,

Plaintiffs,

- against -

LINCOLN ELECTRIC COMPANY; HOBART
BROTHERS COMPANY; ILLINOIS TOOL WORKS,
INC.; THE ESAB GROUP, INC.; SELECT ARC, INC.;
BOC GROUP, INC. f/k/a AIRCO, INC.; J.B. ALLOY
CORPORATION a/k/a UNIBRAZE CORPORATION;
PRAXAIR, INC.; TDY INDUSTRIES, INC.;
TECHALLOY COMPANY, INC.; CBS CORPORATION,
a Delaware Corporation, f/k/a VIACOM, INC., successor by
merger to CBS CORPORATION, a Pennsylvania
corporation, f/k/a WESTINGHOUSE ELECTRIC
CORPORATION; UNION CARBIDE CORPORATION;
EUTECTIC CORPORATION; A.O. SMITH
CORPORATION; SANDVIK, INC.; DELORO STELLITE
COMPANY, INC.; ARCOS INDUSTRIES, L.L.C.;
MILLER ELECTRIC MANUFACTURING CO., INC.;
THE CITY OF NEW YORK; and JOHN DOE
DEFENDANTS A-Z,

Defendants.

Docket No.: 07 Civ. 7855 (JFK)

ANSWER

Defendant, ARCOS INDUSTRIES, L.L.C., by its attorneys, Segal McCambridge Singer
& Mahoney, Ltd., answering the Plaintiffs' Complaint alleges, upon information and belief, as
follows:

THE PARTIES

1. Defendant Arcos Industries, L.L.C. (hereinafter, "Arcos") denies knowledge or
information sufficient to form a belief as to each and every allegation contained in paragraph 1.

2. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 2.

3. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 3.

4. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 4.

5. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 5.

6. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 6.

7. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 7.

8. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 8.

9. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 9.

10. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 10.

11. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 11.

12. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 12.

13. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 13.

14. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 14.

15. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 15.

16. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 16.

17. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 17.

18. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 18.

19. Arcos denies the allegations of paragraph 19, except admits that it is a limited liability corporation organized under the laws of the state of Michigan corporation with its principal place of business in Pennsylvania.

20. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 20.

21. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 21.

22. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 22.

23. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 23.

24. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 24.

JURISDICTION AND VENUE

25. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 25 of the Plaintiffs' Complaint and respectfully refers all questions of law to the Court.

26. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 26 of the Plaintiffs' Complaint and respectfully refers all questions of law to the Court.

FACTS

27. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 27 of the Plaintiffs' Complaint.

28. The allegations of paragraph 28 are Plaintiff's characterizations of their case, to which no response is required. To the extent paragraph 28 may be deemed to contain allegations of fact, Arcos denies all such allegations.

29. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 29 of the Plaintiffs' Complaint.

30. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 30 of the Plaintiffs' Complaint.

31. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 31 of the Plaintiffs' Complaint.

32. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 32 of the Plaintiffs' Complaint.

33. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 33 of the Plaintiffs' Complaint.

34. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 34 of the Plaintiffs' Complaint.

35. Arcos denies the allegations of paragraph 35 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 35.

36. Arcos denies that it committed any unlawful activities or tortious acts, as identified or described in this Complaint, and otherwise denies the remaining allegations of paragraph 36 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 36.

37. Arcos denies the allegations of paragraph 37 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 37.

38. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 38 of the Plaintiffs' Complaint.

39. Arcos denies the allegations of paragraph 39 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39.

40. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 40 of the Plaintiffs' Complaint.

41. Arcos denies the allegations of paragraph 41 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 41.

42. Arcos denies the allegations of paragraph 42, including subsections a-f inclusive to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 42.

43. Arcos denies the allegations of paragraph 43 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 43.

44. Arcos denies the allegations of paragraph 44 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 44.

45. Arcos denies the allegations of paragraph 45 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 45.

46. Arcos denies the allegations of paragraph 46 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 46.

47. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 47 of the Plaintiffs' Complaint.

48. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 48 of the Plaintiffs' Complaint.

49. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 49 of the Plaintiffs' Complaint.

50. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 50 of the Plaintiffs' Complaint.

51. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 51 of the Plaintiffs' Complaint.

52. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 52 of the Plaintiffs' Complaint.

53. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 53 of the Plaintiffs' Complaint.

54. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 54 of the Plaintiffs' Complaint.

55. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 55 of the Plaintiffs' Complaint.

56. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 56 of the Plaintiffs' Complaint.

57. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 57 of the Plaintiffs' Complaint.

58. Arcos denies the allegations of paragraph 58 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 58.

59. Arcos denies the allegations of paragraph 59 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 59.

60. Arcos denies the allegations of paragraph 60 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 60.

61. Arcos denies the allegations of paragraph 61 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 61.

62. Arcos denies the allegations of paragraph 62 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 62.

63. Arcos denies the allegations of paragraph 63 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 63.

64. Arcos denies the allegations of paragraph 64 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 64.

65. Arcos denies the allegations of paragraph 4 5to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 65.

66. Arcos denies the allegations of paragraph 66 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 66.

67. Arcos denies the allegations of paragraph 67 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 67.

68. Arcos denies the allegations of paragraph 68 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 68.

69. Arcos denies the allegations of paragraph 69 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 69.

70. Arcos denies the allegations of paragraph 70 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 70.

71. Arcos denies the allegations of paragraph 71 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 71.

72. Arcos denies the allegations of paragraph 72 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 72.

73. Arcos denies the allegations of paragraph 73 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 73.

74. Arcos denies the allegations of paragraph 74 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 74.

75. Arcos denies the allegations of paragraph 75 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 75.

76. Arcos denies the allegations of paragraph 76 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 76.

77. Arcos denies the allegations of paragraph 77 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 77.

78. Arcos denies the allegations of paragraph 78 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 78.

79. Arcos denies the allegations of paragraph 79 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 79.

80. Arcos denies the allegations of paragraph 80 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 80.

81. Arcos denies the allegations of paragraph 81 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 81.

FIRST CLAIM
CONSPIRACY AND FRAUDULENT CONCEALMENT

82. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "81" of the Plaintiffs' Complaint.

83. Arcos denies the allegations of paragraph 83 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 83.

84. Arcos denies the allegations of paragraph 84, including subsections a-f inclusive, to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 84.

85. Arcos denies the allegations of paragraph 85, including subsections a-c inclusive, to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 85.

86. Arcos denies the allegations of paragraph 86 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 86.

87. Arcos denies the allegations of paragraph 87 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 87.

88. Arcos denies the allegations of paragraph 88 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 88.

89. Arcos denies the allegations of paragraph 89 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 89.

SECOND CLAIM

COMMON LAW FRAUD

FAILURE TO DISCLOSE

90. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "89" of the Plaintiffs' Complaint.

91. Arcos denies the allegations of paragraph 91 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 91.

92. Arcos denies the allegations of paragraph 92 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 92.

93. Arcos is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 93.

94. Arcos denies the allegations of paragraph 94 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 94.

95. Arcos denies the allegations of paragraph 95 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 95.

96. Arcos is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 96.

THIRD CLAIM
NEGLIGENCE

97. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "96" of the Plaintiffs' Complaint.

98. Arcos denies the allegations of paragraph 98 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 98.

99. Arcos denies the allegations of paragraph 99 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 99.

100. Arcos denies the allegations of paragraph 99 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 99.

101. Arcos denies the allegations of paragraph 101 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 101.

102. Arcos denies the allegations of paragraph 102 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 102.

103. Arcos denies the allegations of paragraph 103 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 103.

104. Arcos denies the allegations of paragraph 104 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 104.

105. Arcos denies the allegations of paragraph 105 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 105.

106. Arcos denies the allegations of paragraph 106 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 106.

FOURTH CLAIM
NEGLIGENCE - SALE OF PRODUCT

107. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "106" of the Plaintiffs' Complaint.

108. Arcos denies the allegations of paragraph 108 to the extent said allegations are directed against Arcos , except to admit that it manufactured and sold welding products. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 108.

109. Arcos is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 109.

110. Arcos denies the allegations of paragraph 110 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 110.

111. Arcos denies the allegations of paragraph 111, including subsections a-c inclusive, to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 111.

112. Arcos denies the allegations of paragraph 112 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 112.

113. Arcos denies the allegations of paragraph 112 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 112.

114. Arcos denies the allegations of paragraph 112 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 112.

115. Arcos denies the allegations of paragraph 115 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 115.

FIFTH CLAIM
LIABILITY TO PLAINTIFF FOR
NEGLIGENT PERFORMANCE OF UNDERTAKING

116. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "115" of the Plaintiffs' Complaint.

117. Arcos denies the allegations of paragraph 117 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 117.

118. Arcos denies the allegations of paragraph 118 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 118.

119. Arcos is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 119.

120. Arcos denies the allegations of paragraph 120 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 120.

121. Arcos denies the allegations of paragraph 121 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 121.

122. Arcos denies the allegations of paragraph 122 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 122.

123. Arcos denies the allegations of paragraph 123 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 123.

124. Arcos is without knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 124.

125. Arcos denies the allegations of paragraph 125 to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 125.

SIXTH CLAIM
STRICT LIABILITY—UNREASONABLY DANGEROUS PRODUCT
MARKETING DEFECT—MISREPRESENTATION

126. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "125" of the Plaintiffs' Complaint.

127. Arcos denies the allegations of paragraph 127 to the extent said allegations are directed against Arcos , except admits that it is a manufacturer of welding products. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 127.

128. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 128 of the Plaintiffs' Complaint.

129. Arcos denies the allegations of paragraph 129 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 129.

130. Arcos denies the allegations of paragraph 130, including subsections a-d inclusive, to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 130.

131. Arcos denies the allegations of paragraph 131 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 131.

132. Arcos denies the allegations of paragraph 132 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 132.

133. Arcos denies any defect(s) in any of its products. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 133, and on that basis denies same.

SEVENTH CLAIM
STRICT LIABILITY—DESIGN DEFECT

134. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs “1” through “133” of the Plaintiffs’ Complaint.

135. Arcos denies the allegations of paragraph 135 to the extent said allegations are directed against Arcos , except admits that it is a manufacturer of welding products. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 135.

136. Arcos denies the allegations of paragraph 136, including subsections a-d inclusive, to the extent said allegations are directed against Arcos and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 136.

137. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 137 of the Plaintiffs’ Complaint.

138. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 138 of the Plaintiffs’ Complaint.

139. Arcos denies the allegations of paragraph 139 to the extent said allegations are directed against Arcos and denies any defect(s) in any of its products. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 139.

EIGHTH CLAIM

WARRANTY

141. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "140" of the Plaintiffs' Complaint.

142. Arcos denies the allegations of paragraph 142 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 142.

143. Arcos denies the allegations of paragraph 143 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 143.

**NINTH CLAIM
AIDING AND ABETTING, ACTING IN CONCERT,
AND JOINT AND CONCURRENT TORTFEASER
IN THE TORTIOUS FAILURE TO WARN PLAINTIFF**

144. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "143" of the Plaintiffs' Complaint.

145. Arcos denies the allegations of paragraph 145 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 145.

146. Arcos denies the allegations of paragraph 146 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 146.

147. Arcos denies the allegations of paragraph 147 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 147.

148. Arcos denies the allegations of paragraph 148 to the extent said allegations are directed against Arcos.

149. Arcos denies the allegations of paragraph 149 to the extent said allegations are directed against Arcos.

150. Arcos denies the allegations of paragraph 150 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 150.

151. Arcos denies the allegations of paragraph 151 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 151.

152. Arcos denies the allegations of paragraph 152 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 152.

153. Arcos denies the allegations of paragraph 153 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 153.

154. Arcos denies the allegations of paragraph 154 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 154.

155. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 155 of the Plaintiffs' Complaint.

156. Arcos denies the allegations of paragraph 156 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 156.

157. Arcos denies the allegations of paragraph 157 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 157.

158. Arcos denies the allegations of paragraph 158 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 158.

159. Arcos denies the allegations of paragraph 159 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 159.

160. Arcos denies the allegations of paragraph 160 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 160.

161. Arcos denies the allegations of paragraph 161 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 161.

162. Arcos denies the allegations of paragraph 162 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 162.

163. Arcos denies the allegations of paragraph 163 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 163.

164. Arcos denies the allegations of paragraph 164 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 164.

165. Arcos denies the allegations of paragraph 165 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 165.

166. Arcos denies the allegations of paragraph 166 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 166.

167. Arcos denies the allegations of paragraph 167 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 167.

168. Arcos denies the allegations of paragraph 168 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 168.

180. This paragraph immediately following paragraph "168" in the Complaint is denoted as paragraph "180". Arcos makes no answer to paragraph "180" for the reason that it is directed only against other defendants.

169. Arcos denies the allegations of paragraph 169 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 169.

170. Arcos denies the allegations of paragraph 170 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 170.

171. Arcos denies the allegations of paragraph 171 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 171.

172. Arcos denies the allegations of paragraph 172 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 172.

173. Arcos denies the allegations of paragraph 173 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 173.

174. Arcos denies the allegations of paragraph 174 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 174.

175. Arcos denies the allegations of paragraph 175 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 175.

176. Arcos denies the allegations of paragraph 176 to the extent said allegations are directed against Arcos.

177. Arcos denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 177.

178. Arcos denies the allegations of paragraph 178 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 178.

179. Arcos denies the allegations of paragraph 179 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 179.

**TENTH CLAIM
AIDING AND ABETTING, ACTING IN CONCERT,
AND JOINT AND CONCURRENT TORTFEASOR
IN THE FAILURE TO INVESTIGATE AND TEST
THE HEALTH HAZARDS OF EXPOSURE
TO MANGANESE IN WELDING FUMES**

180. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "179" of the Plaintiffs' Complaint.

181. Arcos denies the allegations of paragraph 181 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is

without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 181.

182. Arcos denies the allegations of paragraph 182 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 182.

183. Arcos denies the allegations of paragraph 183 to the extent said allegations are directed against Arcos , and respectfully refers all questions of law to the Court. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 183.

184. Arcos denies the allegations of paragraph 184 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 184

185. Arcos denies the allegations of paragraph 185 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 185.

186. Arcos denies the allegations of paragraph 186 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 186.

187. Arcos denies the allegations of paragraph 187 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 187.

188. Arcos denies the allegations of paragraph 188 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 188.

189. Arcos denies the allegations of paragraph 189 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 189.

190. Arcos denies the allegations of paragraph 190 to the extent said allegations are directed against Arcos.

ELEVENTH CLAIM
LOSS OF CONSORTIUM

191. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "191" of the Plaintiffs' Complaint.

192. Arcos denies the allegations of paragraph 192 to the extent said allegations are directed against Arcos.

TWELFTH CLAIM
SEAMAN'S CASE UNDER THE
JONES ACT FOR PERSONAL INJURIES

193. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "193" of the Plaintiffs' Complaint.

194. Arcos denies that Plaintiff has any claim under the Jones Act, 46 U.S.C. 30104 et seq., and otherwise denies the allegations contained in paragraph 194.

195. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 195 of the Plaintiffs' Complaint.

196. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 196 of the Plaintiffs' Complaint.

197. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 197 of the Plaintiffs' Complaint.

198. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 198 of the Plaintiffs' Complaint.

199. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 199 of the Plaintiffs' Complaint.

200. Arcos, denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 200 of the Plaintiffs' Complaint.

201. Arcos makes no answer to paragraph 201 for the reason that it is directed only against other defendants.

202. Arcos denies the allegations of paragraph 202 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 202.

203. Arcos denies the allegations of paragraph 203 to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 203.

204. Arcos denies that Plaintiff is entitled to any award of damages against Arcos , and prays that judgment be entered in favor of Arcos , together with costs and any such further relief as the court deems fair and equitable.

THIRTEENTH CLAIM
DAMAGES/PUNITIVE DAMAGES

205. Arcos herein repeats, reiterates and realleges each and every answer heretofore made to Paragraphs "1" through "205" of the Plaintiffs' Complaint.

206. Arcos denies the allegations of paragraph 206, including subsections a-i inclusive, to the extent said allegations are directed against Arcos. Arcos is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 202.

DEFENSES

Pursuant to Rules 8(c) and 12(b) of the Federal Rules of Civil Procedure, Arcos hereby asserts the following defenses:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted as against Arcos.

SECOND DEFENSE

Plaintiffs' negligence must be compared to the negligence, if any, of Defendants, and Plaintiffs' recovery, if any, must be reduced, under the doctrine of comparative negligence, based on Plaintiffs' corresponding degree of negligence.

THIRD DEFENSE

Plaintiffs' negligence-based claims are barred, under the doctrine of comparative negligence, because Plaintiffs' negligence exceeds the negligence of the Defendants.

FOURTH DEFENSE

Plaintiffs' claims are time-barred under the applicable statute of limitations and/or statute of repose.

FIFTH DEFENSE

The damages allegedly sustained by the plaintiff(s) were caused, in whole or in part, by the negligence or other culpable conduct of the plaintiff and/or other Defendants, which conduct constituted a supervening cause of plaintiff's(s') alleged injuries.

SIXTH DEFENSE

Any damages allegedly sustained by the plaintiff(s) were the proximate result of an unforeseen and/or unforeseeable negligent, grossly negligent, wanton, reckless, omission or conduct of intervening third parties or superseding parties.

SEVENTH DEFENSE

The damages allegedly sustained by the plaintiff(s) were caused, in whole or in part, by the negligence or other culpable conduct of one or more persons or instrumentalities over which Arcos had no control and with whom it had no legal relationship.

EIGHTH DEFENSE

If the plaintiff(s) sustained damages as alleged, such damages occurred while they engaged in activities into which they entered, knowing the hazard, risk and danger of the activities and they assumed the risks incidental to and attendant to the activities.

NINTH DEFENSE

To the extent that any injury relating to the named plaintiff occurred in the context of an employer-employee relationship, claims for said injuries are barred by the Workers' Compensation Act.

TENTH DEFENSE

No acts or omissions of this defendant proximately caused any damages.

ELEVENTH DEFENSE

The damages allegedly sustained by the plaintiff(s) which allegedly arose from the Equipment were caused by the alteration, misuse, non-use and/or improper maintenance of the Equipment by one or more persons or instrumentalities other than Arcos.

TWELFTH DEFENSE

To the extent that the plaintiff(s) was exposed to any hazardous substances as a result of conduct by Arcos, which is denied, said exposure was de minimis and not a substantial contributing factor to any injury which the plaintiff(s) may have sustained, and not actionable at law or equity.

THIRTEENTH DEFENSE

Exposure to hazardous substances attributable to this defendant is so minimal so as to be insufficient to establish to a reasonable degree of probability that the products are capable of causing injury or damages and must be considered speculative as a matter of law.

FOURTEENTH DEFENSE

If this answering Defendant was on notice of any hazard or defect for which plaintiff(s) seeks relief, which this answering defendant denies, plaintiff(s) also had such notice and is thereby barred from recovery.

FIFTEENTH DEFENSE

There is no justiciable issue or controversy.

SIXTEENTH DEFENSE

The claims for damages have not accrued, are purely speculative, uncertain and contingent.

SEVENTEENTH DEFENSE

None of the alleged injury or damage was foreseeable at the time of the acts or omissions in plaintiff's Complaint.

EIGHTEENTH DEFENSE

Plaintiff was warned of risk of exposure to hazardous substances.

NINETEENTH DEFENSE

Plaintiffs' cause of action for exemplary or punitive damages is barred because such damages are not recoverable or warranted in this action.

TWENTIETH DEFENSE

Plaintiffs' demands for punitive damages are barred by the due process clauses of the Fourteenth Amendment to the United States Constitution and the New York State Constitution.

TWENTY-FIRST DEFENSE

Plaintiffs' demands for punitive damages are barred by the proscription of the Eighth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I, Section 5 of the New York State Constitution prohibiting the imposition of excessive fines.

TWENTY-SECOND DEFENSE

Plaintiffs' demands for punitive damages are barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I, Section 6 of the New York State Constitution.

TWENTY-THIRD DEFENSE

If plaintiff sustained injuries in the manner alleged, all of which has been denied by this defendant, the liability of Arcos if any, shall be limited in accordance with Article 16 of the Civil Practice Law and Rules.

TWENTY-FOURTH DEFENSE

At all times relevant to this litigation, this defendant complied with all applicable laws, regulations and standards.

TWENTY-FIFTH DEFENSE

Relief is barred by virtue of the doctrine of estoppel and waiver.

TWENTY-SIXTH DEFENSE

That at all times relevant to this litigation, the agents, servants and/or employees of this defendant utilized proper methods in the conduct of its operations, in conformity with the available knowledge and research of the scientific and industrial communities.

TWENTY-SEVENTH DEFENSE

Plaintiff contributed to the illness(es), either in whole or in part, by exposure to or the use of tobacco products and/or other substances, products, medications or drugs.

TWENTY-EIGHTH DEFENSE

To the extent that Arcos might be held vicariously liable for the actions taken or inactions not taken by the federal Occupational Safety and Health Administration ("OSHA"), and/or other federal, state and city agencies and employees for which those agencies or employees are immune from liability under federal and/or state common law and/or under federal and/or state statute, Arcos are likewise immune from liability for those actions or inactions pursuant to the federal and/or state common law and/or federal and/or state statute.

TWENTY-NINTH DEFENSE

Arcos owed no duty to plaintiff(s).

THIRTIETH DEFENSE

To the extent that Arcos is found to have owed a duty to plaintiff(s), which Arcos specifically denies, Arcos acted reasonably under the circumstances and complied with all applicable statutes, regulations, codes and industry standards.

THIRTY-FIRST DEFENSE

Plaintiff's alleged injuries were caused directly, solely and proximately by sensitivities idiosyncrasies and other reactions peculiar to the allegedly injured plaintiff and not found in the general public.

THIRTY-SECOND DEFENSE

Any recovery by plaintiff(s) for the injuries alleged is barred, in whole or in part, by the allegedly injured plaintiff's failure to use appropriate safety devices made available to him that would have reduced or prevented his alleged injuries.

THIRTY-THIRD DEFENSE

Any recovery by plaintiff for the injuries alleged is barred, in whole or in part, by the allegedly injured plaintiff's misuse of appropriate safety devices made available to him that would have reduced or prevented his alleged injuries.

THIRTY-FOURTH DEFENSE

To the extent that plaintiff seeks recovery from Arcos for medical monitoring damages, such damages may not be awarded to plaintiff in the absence of the clinically-demonstrable presence in the allegedly injured plaintiff's body of a toxin for which Arcos is purportedly

responsible or of some other indication of a disease currently suffered by the allegedly injured plaintiff that was induced by a toxin for which Arcos is purportedly responsible.

THIRTY-FIFTH DEFENSE

Plaintiff's loss of consortium claim is barred as a matter of law to the extent that the alleged injuries predate the date of plaintiff's marriage.

THIRTY-SIXTH DEFENSE

Any injuries and/or damages sustained by plaintiff were the direct result of plaintiff's recalcitrance in failing to use the personal protective equipment provided.

THIRTY-SEVENTH DEFENSE

Any injuries and/or damages sustained by plaintiff were the direct result of plaintiff's deliberate misuse of the personal protective equipment provided.

THIRTY-EIGHTH DEFENSE

Any injuries and/or damages sustained by plaintiff(s) were proximately caused by plaintiff's unauthorized alteration of the personal protective equipment, including the use of respirators, at issue.

THIRTY-NINTH DEFENSE

All defenses which have been or will be asserted by other Defendant and/or any third-party Defendant in this action are adopted and incorporated by reference as if fully set forth at length herein as defenses to plaintiff's Complaint. In addition, Arcos will rely upon any and all other further defenses which become available or appear during discovery proceedings in this action and hereby specifically reserves the right to amend its answer for the purposes of asserting any such additional affirmative defenses.

FIRST CROSS-CLAIM
AGAINST DEFENDANT

1. That without admitting any allegations contained within plaintiffs' Complaint, any injury alleged by plaintiffs was due solely to the negligence, carelessness, recklessness, strict liability, breach of warranty, breach of contract or other agreements and/or affirmative acts of other Defendants, which will be proven upon trial of this matter.

2. That if plaintiff(s) recover judgment and/or a verdict from Defendant ARCOS INDUSTRIES, L.L.C., such recovery will have come about solely due to the negligence, carelessness, recklessness, strict liability, breach of warranty, breach of contract or other agreements and/or affirmative acts of other Defendants, as stated above, and not due to any culpable conduct on the part of ARCOS INDUSTRIES, L.L.C.

3. That ARCOS INDUSTRIES, L.L.C. is entitled to indemnification in common-law and/or contract or other agreements from any and all defendants, for any judgment and/or verdict that the plaintiff(s) may recover from ARCOS INDUSTRIES, L.L.C.

SECOND CROSS-CLAIM
AGAINST DEFENDANT

4. That if the plaintiff(s) recovers judgment and/or verdict from the Defendant ARCOS INDUSTRIES, L.L.C. then ARCOS INDUSTRIES, L.L.C. will be entitled to contribution from any or all Defendants for a proportionate share of any recovery and/or verdict that the plaintiff(s) may recover against ARCOS INDUSTRIES, L.L.C.

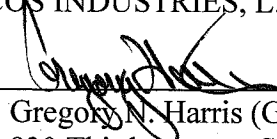
WHEREFORE, Defendant ARCOS INDUSTRIES, L.L.C., demands judgment dismissing the Complaint, together with attorney's fees, cost and disbursements and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 9, 2007

Yours, etc.

SEGAL MCCAMBRIDGE SINGER & MAHONEY, LTD.
Attorneys for Defendant
ARCOS INDUSTRIES, L.L.C.

By: _____


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